

REMARKS

Claims 19 to 29 are added, and therefore claims 10 through 29 are now pending.

The Office Action objected to an IDS submitted on April 21, 2005. Even though copies of the three German reference should have been provided by the International Searching Authority, to facilitate matters, copies of the three German references accompany this response. The Examiner is requested to consider and make them of record, and indicate his or her consideration of the documents by initialing the originally filed 1449 paper.

Claims 10 through 17 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,223,114 to Boros et al. ("Boros"). *Paper Number 20080216, pg 2.*

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

The Boros reference refers to a system for regulating the driving dynamics of a road vehicle, setpoints for the yaw rate Ψ and the float angle β of the vehicle are generated continuously by evaluating a simulation computer implemented vehicle model. The simulation computer generates control signals for activating at least one wheel brake of the vehicle based on a comparison of the reference values Ψ_{SO} as a setpoint, and the actual values Ψ_I of the yaw rate continuously recorded by a yaw rate sensor. Accordingly, Boros,

considered separately or in any combination, does not disclose or suggest the feature of “an arrangement for determining the center of rotation as a function of a yaw rate and a float angle,” as in claim 10.

In particular, Boros does not use any parameters to determine a center of rotation. Specifically, Boros refers to a float angle being determined by road radius of the center of gravity of vehicle and the average road radii of the rear wheels of the vehicle, which is determined with a knowledge of the wheel base of the rear wheels from the wheel rpm values of said wheels. (*Boros*, col. 3, lines 37 to 45). Alternatively, the float angle can be determined by computer from the radius of the curve being traveled and the speed of the vehicle. (*Boros*, col. 3, lines 55 to col. 4, line 5). Conspicuously, Boros is wholly silent on determining a center of rotation of a vehicle a function of a yaw rate and a float angle.

At best, Boros refers to a combination of the yaw rate and float angle determine a centrifugal force. (col. 10, lines 33 through 42), but the determination of the centrifugal force does not suggest any form of rotation - - let alone determining a center of rotation as a function of yaw rate and a float angle. Accordingly, claim 10 is allowable, as are its dependent claims 11 to 17 (and claim 18).

Claim 18 was rejected under 35 U.S.C. 103(a) as unpatentable over Boros in view of U.S. Patent No. 6,113,138 to Hermann et al. (“Hermann”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co.*,

Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The Hermann reference refers to control device in a motor vehicle for detecting an impact and for detecting a rotational movement includes a transversal acceleration pick-up in each half of the vehicle, as defined by the longitudinal axis of the vehicle, and a longitudinal acceleration pick-up. An evaluation device evaluates longitudinal acceleration and transversal acceleration variables and derives a rotational movement variable from the transversal acceleration variables. The Hermann reference does not disclose any of the features described above, and does not teach that the deficiencies of Boros should be remedied or changed in any way to provide the presently claims subject matter.

Still further, claim 18 depends from claim 10, and is therefore allowable for essentially the same reasons, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference.

New claims 19 to 29 do not add any new matter and are supported by the present application, including the specification. Claims 19 to 29 ultimately depend from claim 10, and are therefore allowable for at least the same reasons.

Accordingly, claims 10 to 29 are allowable.

Conclusion

In view of the foregoing, Applicants respectfully submit that all pending claims 10 to 29 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Dated: _____

4/24/2008

Respectfully submitted,
KENYON & KENYON LLP

By: _____

Gerard A. Messina
Reg. No. 35,952
One Broadway
New York, NY 10004
(212) 425-7200
CUSTOMER NO. 26646

Reg. no.
33,805

Harold
DEDITCA